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KING COUNTY  
SUPERIOR COURT CLERK  
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CASE #: 20-2-11085-0 SEA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

STATE FARM FIRE AND CASUALTY  
COMPANY, an Illinois corporation; RICHARD  
GUSTAV and FRANCES GUSTAV,  
individually and the marital community  
comprised thereof; SAFECO INSURANCE  
COMPANY OF AMERICA, a New Hampshire  
corporation,

Plaintiffs,

v.

MICHAEL MCKELVEY COMPANY, LLC, a  
Washington limited liability company a/k/a  
and/or d/b/a RIFT CUT CONSTRUCTION,  
LLC, a Washington limited liability company;  
CARLOS ORDONEZ VASQUEZ, individually  
and d/b/a MCO PAINTING, INC., a Washington  
corporation; DOES 1-10.

Defendants.

Cause No.: \_\_\_\_\_

**COMPLAINT FOR DAMAGES**

**INTRODUCTION**

This cause of action arises from fire losses that occurred at Richard Gustav and Frances Gustav's house located at 8622 Fauntlee Crest SW, Seattle, Washington, 98136 ("Subject Property 1") and Ann Erickson's house located at 8624 Fauntlee Crest SW, Seattle, Washington 98136 ("Subject Property 2") on July 17, 2018 ("Subject Fire").

COMPLAINT FOR DAMAGES - 1

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1 Come now Plaintiffs State Farm Fire and Casualty Company (“State Farm”), Richard  
2 Gustav and Frances Gustav, and Safeco Insurance Company of America (“Safeco”), by and  
3 through undersigned counsel of record, state and allege as follows:

4 **I. PARTIES AND JURISDICTION**

5 1.1 At all times relevant, Plaintiff State Farm was and is an Illinois corporation  
6 duly organized under the laws of Illinois with its principal place of business in Bloomington,  
7 Illinois.

8 1.2 At all times relevant, Plaintiffs Richard Gustav and Frances Gustav are a  
9 married couple domiciled in King County, Washington and jointly owned the Subject Property  
10 1.

11 1.3 At all times relevant, State Farm provided insurance to its insured Richard  
12 Gustav and Frances Gustav for the Subject Property 1, in case of fire or other casualty.

13 1.4 At all times relevant, Plaintiff Safeco was and is a New Hampshire corporation  
14 duly organized under the laws of New Hampshire with its principal place of business in Keene,  
15 New Hampshire.

16 1.5 At all times relevant, Safeco provided insurance to its insured Ann Erickson  
17 for the Subject Property 2, in case of fire or other casualty.

18 1.6 Upon information and belief, Defendant Michael McKelvey Company, LLC  
19 a/k/a and/or d/b/a Rift Cut Construction, LLC (collectively hereinafter “Michael McKelvey”)  
20 was a Washington limited liability company with its principal place of business in Seattle,  
21 Washington.

22 1.7 Upon information and belief, Defendant Carlos Ordonez Vasquez is an  
23 individual domiciled in King County, Washington, and at all times relevant was and is doing  
24 business under the name MCO Painting, Inc. (collectively hereinafter “MCO”), a Washington  
25 corporation with its principal place of business in Seattle, Washington.  
26

COMPLAINT FOR DAMAGES - 2

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1.8 Certain Doe individuals and/or entities who have yet to be identified with particularity may share in fault for this losses and Plaintiffs reserve the right to name said parties at a later date.

1.9 This Court is vested with jurisdiction pursuant to RCW 2.08.010.

1.10 Venue is properly laid in this Court pursuant to RCW 4.12.025.

## II. FACTS

2.1 Plaintiffs re-allege all preceding paragraphs as though fully set forth herein.

2.2 Upon information and belief, Michael McKelvey was working as a general contractor to conduct a remodel of the Subject Property 1.

2.3 Upon information and belief, Michael McKelvey hired MCO to conduct certain work at the Subject Property 1.

2.4 A fire occurred at the Subject Property 1, which spread to and damaged the Subject Property 2.

2.5 Seattle Fire Department Investigation Division concluded that the fire was the result of improperly discarded stain oil soaked cloth rags that were left in a plastic garbage bag beneath the south exterior deck, next to the wood wall and caused substantial fire damages to the Subject Property 1 and Subject Property 2.

2.6 Subsequent investigation further confirmed that the stain oil soaked cloth rags spontaneously combusted as a result of an exothermic chemical reaction and ignited nearby combustible materials.

2.7 Richard Gustav and Frances Gustav suffered uninsured losses associated with the Subject Fire, estimated to be no less than \$706,441.25.

2.8 Richard Gustav and Frances Gustav submitted a claim to State Farm pursuant to their insurance policy, and State Farm has paid out \$1,813,159.99 under the policy.

2.9 Ann Erickson submitted a claim to Safeco pursuant to her insurance policy, and Safeco has paid out \$16,964.69 under the policy.

COMPLAINT FOR DAMAGES - 3

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1           2.10     Plaintiffs State Farm and Safeco are equitably, contractually and legally  
2 subrogated to all rights and remedies that its insureds may have against Defendants to the  
3 extent of its payments made under the insurance policy.

4                           **III. COUNT ONE – NEGLIGENCE**  
5                           **(Against Defendants Michael McKelvey and MCO)**

6           3.1     Plaintiffs re-allege all preceding paragraphs as though fully set forth herein.

7           3.2     Defendants owed a duty of reasonable care to ensure that the work being  
8 performed at the Subject Property 1 was being performed in a safe, workmanlike manner,  
9 consistent with industry standards and to ensure a safe work environment so as not to create an  
10 unreasonable risk of fire.

11          3.3     Defendants negligently and carelessly breached their duty of reasonable care  
12 by improperly discarding, causing to be improperly discarded or failing to properly instruct  
13 regarding the discarding of stain oil soaked cloth rags in the plastic garbage bag rather than  
14 disposing of them in a non-combustible container or location (e.g. a metal container filled with  
15 water) and in violation of industry standards, and the product's warnings and instructions.

16          3.4     Plaintiffs' damages resulted through no fault of Plaintiffs' insureds.

17          3.5     As a direct and proximate result of Defendants' negligent actions and/or  
18 omissions, Plaintiffs incurred damages in an amount to be proven at trial.

19                           **IV. COUNT TWO – BREACH OF CONTRACT**  
20                           **(Against Defendant Michael McKelvey)**

21          4.1     Plaintiffs re-allege all preceding paragraphs as though fully set forth herein.

22          4.2     Richard Gustav and Frances Gustav entered into a construction contract with  
23 Michael McKelvey to perform remodeling work at the Subject Property 1.

24          4.3     Implied in the terms of this contract was that Michael McKelvey would  
25 perform and/or cause the work to be performed in a competent, professional, and safe manner  
26 in accordance with generally accepted industry practices and to ensure a safe work

COMPLAINT FOR DAMAGES - 4

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1 environment where certain activities of its subcontractors, including MCO, were observing  
2 proper safety precautions, to institute a safety plan, and to otherwise prevent an unreasonable  
3 risk of fire.

4 4.4 Michael McKelvey breached the contract when it failed to perform its duties  
5 and obligations in violation of industry standards, written instructions, warnings and  
6 directions, and in failing to ensure a safe work environment.

7 4.5 As a direct and proximate result of Michael McKelvey's breach of contract,  
8 Plaintiffs incurred damages in an amount to be proven at trial.

9 **V. COUNT THREE – LIABILITY**  
10 **(Against Defendant Does 1-10)**

11 5.1 Plaintiffs re-allege all preceding paragraphs as though fully set forth herein.

12 5.2 The subject losses may have been the whole or partial responsibility of parties  
13 not currently known to Plaintiffs at the time of the filing of this Complaint.

14 5.3 If such parties are later identified, subject to jurisdiction, service of process,  
15 and enforcement of judgment under Washington law, Plaintiffs will amend this Complaint to  
16 substitute said parties for there Does 1-10.

17 **VI. PRAYER FOR RELIEF**

18 WHEREFORE Plaintiffs pray for judgment in its favor and against Defendants as  
19 follows:

20 6.1 For damages to real and personal property in an amount to be proven at trial;

21 6.2 For consequential and incidental damages as may be proven at trial;

22 6.3 For Plaintiffs' costs and expenses incurred herein;

23 6.4 For the full amount of interest as allowed by law, including all prejudgment  
24 interest up until the time judgment is rendered herein;

25 6.5 For attorney's fees to the extend allowed by law; and  
26

COMPLAINT FOR DAMAGES - 5

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